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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,521	07/02/2003	Cheryl E. Zemont	0502.003	5288

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EXAMINER

BROWN, MICHAEL A

ART UNIT PAPER NUMBER

3764

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/612,521

Applicant(s)

ZEMONT, CHERYL E.

Examiner

Michael Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,13,14,16,17,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-5, 13-14, 16-17, and 20-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### DETAILED ACTION

Note: Claims 1-2, 4-5, 13-14, 16-17 and 20-21 had been indicated as allowable in the previous office action. However, a final search provided a reference (Sakai '042) that provided a teaching that prevented the claims from being allowed. Consequently, prosecution is being re-open in this application. The examiner apologizes for any inconvenience incurred by the attorney or the applicant because of this decision.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 13-14, 16-17 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassidy in view of Mauch EP '958, along with Sakai.

Cassidy discloses in figures 1-2 a method for performing a trigger-point massage and a trigger-point therapy device, substantially as claimed. However, Cassidy does not disclose the device being made of plastic, the nodes (a) being cylindrical with flat ends, the nodes being between one half inch in both diameter and length or a rigid press fit between a rigid pin and the node. Mauch EP '958 teaches in figures 1-2 a method of performing a trigger-point massage and a trigger-point therapy device comprising a spherical ball 1 having nodes 3 that are cylindrical (fig. 1) and have flat ends (fig. 2). The nodes 3 are made of plastic. Sakai teaches in figures 1-22 nodes 1 that are between one half inch in length (2.5 cm is between ½ inch and 1 inch) and

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between ½ inch and one inch in diameter, (2.5 cm, col. 5, lines 18-25). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the cylindrical nodes having flat ends as taught by Mauch could be substituted for the spherical shaped nodes disclosed by Cassidy in order to use the flat portion of the nodes to massage the trigger-point on the body. The plastic material is a pliable material (resilient) that would allow the user's to massage the trigger-point without chafing that portion of the skin on the body. The nodes could be constructed to be between one half to one inch in length and diameter as taught by Sakai in order to apply a specific pressure at a specific pressure point. Sakai, also teaches a rigid pin 14' that is in a press fit with the node (the pin is pressed downward to screw it into the node).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No other additional prior art was cited during this office action

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571 -272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown  
July 19, 2005

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a long horizontal flourish extending to the right.

**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**